

REMARKS

Claims 33-52, all the claims pending in the application, have been rejected. Claims 33, 35, 36, 41, 45-47 and 50-52 are amended.

In the Office Action dated January 8, 2009, the Examiner mentioned that claims 33 to 48 would be allowable if rewritten. Therefore, Applicants submit that the amended claims 51 and 52 would be allowable because they are rewritten in dependent form from allowable parent claim 33.

Withdrawal of Finality

The Examiner has made the rejection final and states at page 6 of the Office Action that “Applicant’s amendments necessitated the new ground(s) of rejection presented in this Office Action.” The Examiner cites 37 C.F.R. § 1.136(a) in support of this holding.

This holding is traversed for the following reasons and withdrawal of the finality of the Office Action, should the pending claims not be held allowable after entry of the present amendment, would be respectfully requested.

New Rejection Under Section 112

The Examiner has presented a new rejection under Section 112 that is not necessitated by any amendment made by Applicants in the previously filed response to the Office Action dated January 6, 2009. In particular, the Examiner has newly rejected claims 33, 35, 36, 41 and 45-4 for lacking antecedent bases for certain terms in the claims. None of these claims were amended in the previous response to add the terms that form the basis for this new rejection. Even claim 33, which was made independent, simply had the original language of parent claim 30 added to the original dependent claim language.

Applicable MPEP Provisions

Accordingly, Applicant submits that the Examiner's rejection should not have been made final in accordance with the provisions of MPEP 706.07(a) which states:

Under present practice, second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by Applicants amendment of the claims nor based on information submitted in an Information Disclosure Statement..."

Relief Requested

Since there was neither an amendment nor an IDS that *necessitated* the rejection, Applicant respectfully requests that the outstanding Office Action be deemed non-final, that the final rejection be deemed premature under MPEP 706.07(c) and that it be withdrawn in accordance with MPEP 706.07(d). Accordingly, the RCE should not be entered and the fee payment cancelled. Applicants reserve the right to petition any other action by the Examiner.

Claim Rejections - 35 U.S.C. § 112

Claims 33-52 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. This rejection is traversed for at least the following reasons.

The Examiner has newly identified instances of a lack of antecedent basis in selected claims for the first time. These identified instances of indefiniteness existed in the claims presented prior to the Office Action dated January 6, 2009. Accordingly, Applicants have not previously been notified of these issues and have not previously been given an opportunity to address and correct these bases for indefiniteness.

The amendments to the claims to correct each and every basis for indefiniteness should be entered and the finality of the Office Action should be withdrawn.

Claim Rejections - 35 U.S.C. § 103

Claims 51 and 52 are rejected under 35 U.S.C. § 103(a) as being obvious in view of the teachings of Janssen (6,560,529). This rejection is traversed for at least the following reasons.

Allowability of Claims 33-50

First, Applicants note that only claims 51 and 52 are rejected on the basis of prior art. Thus, claims 33-50 should be allowable after entry of the amendment to the claims as presented herein to remove the bases for indefiniteness identified for the first time by the Examiner.

Allowability of Claims 51 and 52

Second, we believe that if claims 51 and 52 are either (1) made to depend from claim 33, as is claim 50, or (2) amended in a manner similar to claim 33, they too may be patentable.

We look to you for your detailed comments and instructions as to how to proceed in responding to this Office Action. We also recommend that the claims should be reviewed in order to ensure that they accurately reflect the invention. We have attempted to correct some of the language and phrases used, but are uncertain as to whether these changes capture the intended scope of protection. Please advise if you have any questions.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.114(c)
U.S. Application No.: 10/519,919

Attorney Docket No.: Q85402

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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Date: May 6, 2010